

Congress of the United States
Washington, DC 20515

June 13, 2019

The Honorable Kevin McAleenan
Acting Secretary of Homeland Security
United States Department of Homeland Security
300 7th Street, S.W.
Washington, D.C. 20024

Dear Secretary McAleenan:

We write to express concerns about reports that the U.S. Customs and Border Protection (CBP) is using facial recognition technology to scan American citizens under the Biometric Exit Program. This is an unprecedented and unauthorized expansion of the agency's authority. As such, we urge the agency to allow for public input and establish privacy safeguards.

The Department of Homeland Security's 2016 "Entry/Exit Overstay Report" states that "the entry/exit mission is to successfully capture and match the arrival and departure records of foreign nationals who visit the United States to help determine who is lawfully abiding by, or violating, immigration law."^[1] Under current law, CBP is permitted to obtain biographic and biometric information of foreign nationals through the Biometric Exit Program. In 2018, CBP expanded this pilot program to include facial recognition scans on individuals boarding certain international flights.

Considering that the legal authority which CBP cites to carry out this program expressly limits the collection of biometric data to "foreign nationals," we were stunned to learn of reports that the agency has partnered with the Transportation Security Administration and commercial airlines to use facial recognition technology on American citizens. It remains unclear under what authority CBP is carrying out this program on Americans.

Among the strong concerns that travelers have expressed about this program is the inadequate notice and information that is currently provided to Americans. On the CBP Biometric Exit FAQs website, it states that "CBP does not require U.S. Citizens or exempt aliens to have their photos taken. U.S. Citizens and exempt aliens who do not wish to participate in this biometric collection should notify a CBP Officer or an airline or airport representative in order to seek an alternative means of verifying their identity and documents"^[2] This guidance comes too little, too late for most travelers. The random nature of this pilot program does not allow travelers the requisite advanced notice to make an informed decision on their willingness to participate.

^[1]<https://www.dhs.gov/sites/default/files/publications/FY%2015%20DHS%20Entry%20and%20Exit%20Overstay%20Report.pdf>

^[2] <https://www.cbp.gov/travel/biometrics/biometric-exit-faqs>

Americans are also troubled about the potential misuse and accuracy of data captured in this facial recognition program, of which they have little control. False matches and algorithmic bias problems in facial recognition technology are well-documented. A September 2018 DHS Inspector General report noted a “low 85-percent biometric confirmation rate.”^[3] The same report stated that U.S. citizens accounted for the lowest biometric confirmation rate and were up to six times more likely to be rejected than non-U.S. citizens. The report identified that passengers under age 29 or over 70 had lower match rates than other passengers.^[4] Moreover, CBP claims that the success of this program will rely upon airports and airlines purchasing digital cameras. CBP has provided limited guidance on how it would prevent the potential misuse of data by private companies.

Serious issues with the Biometric Exit Program have gone unaddressed. As federal representatives, we believe the American people deserve transparency regarding how their biometric data is being used and stored. We urge you to clearly identify:

- 1) What laws/statutes give CBP the authority to use facial recognition technology on American citizens in the DHS exit program?
- 2) What effort has CBP made to provide adequate advanced notice about this program and opt-out procedures to travelers?
- 3) What is the nature of the contracts between CBP, airports and airlines? What legal liability do airport and airlines share under this program?
- 4) CBP recently acknowledged that one agency subcontractor had “violated mandatory security and privacy protocols outlined in their contract” and transferred copies of license plate images and traveler images to the company network. The subcontractor’s network was then compromised by a cyberattack. How many audits has CBP conducted to date on CBP’s approved partners to ensure they are immediately purging photos following transmittal to the Traveler Verification Service (TVS) and what were the findings from the audits?

Given the continued false matches and algorithmic bias problems in facial recognition technology and the use of this technology on U.S. citizens, we call on the Department of Homeland Security to allow for public input and address transparency, privacy and security concerns before expanding this program.

Sincerely,

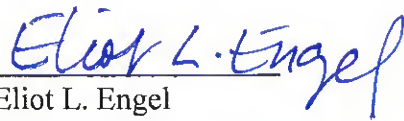
SUSAN WILD
Member of Congress

EMANUEL CLEAVER, II
Member of Congress

YVETTE D. CLARKE
Member of Congress

^[3] Progress Made, but CBP Faces Challenges Implementing a Biometric Capability to Track Air Passenger Departures Nationwide, September 21, 2018 <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-80-Sep18.pdf>

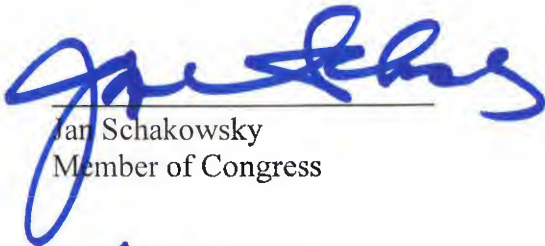
^[4] Ibid.



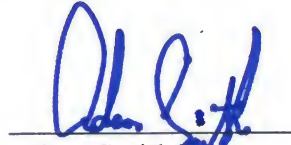
Eliot L. Engel
Member of Congress



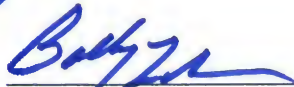
Anna G. Eshoo
Member of Congress



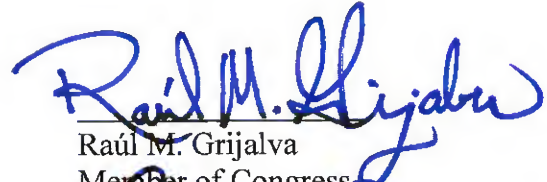
Jan Schakowsky
Member of Congress



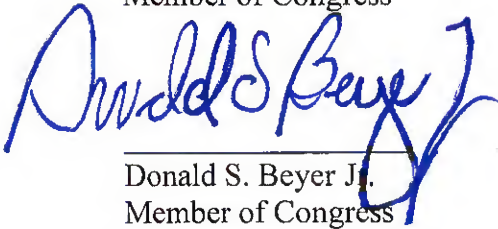
Adam Smith
Member of Congress



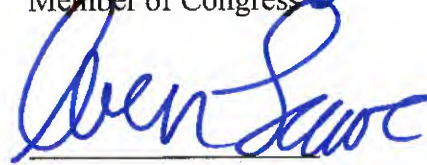
Bobby L. Rush
Member of Congress



Raúl M. Grijalva
Member of Congress



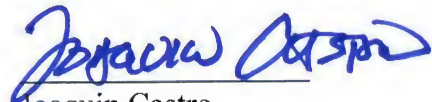
Donald S. Beyer Jr.
Member of Congress



Gwen Moore
Member of Congress



Marc Veasey
Member of Congress



Joaquin Castro
Member of Congress



Eleanor Holmes Norton
Member of Congress



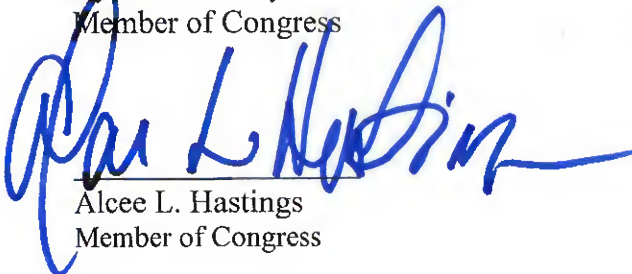
Alexandria Ocasio-Cortez
Member of Congress



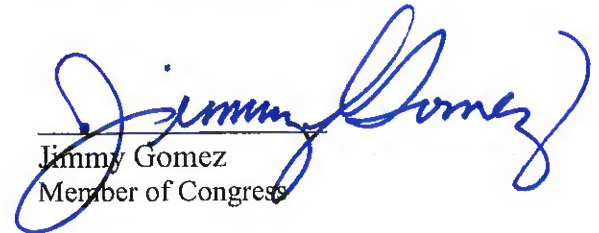
Ayanna Pressley
Member of Congress



Rashida Tlaib
Member of Congress



Alcee L. Hastings
Member of Congress



Jimmy Gomez
Member of Congress

A stylized blue ink signature of Ro Khanna, featuring a large 'R' and 'K'.

Ro Khanna
Member of Congress

A blue ink signature of Mark Takano, written in a cursive style.

Mark Takano
Member of Congress

A blue ink signature of Ilhan Omar, with a long horizontal stroke across the top.

Ilhan Omar
Member of Congress

A blue ink signature of Adriano Espaillat, featuring a large 'A' and 'E'.

Adriano Espaillat
Member of Congress